



## **DEPARTMENT OF AGRICULTURE**

### **Forest Service**

#### **Jefferson National Forest; Monroe County, West Virginia; Giles and Montgomery County, Virginia. Mountain Valley Pipeline and Equitrans Expansion Project Supplemental Environmental Impact Statement**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare a supplemental environmental impact statement; revised.

**SUMMARY:** The USDA, Forest Service (FS) published a notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS) to the 2017 Federal Energy Regulatory Commission (FERC) Final Environmental Impact Statement (FEIS) for the Mountain Valley Pipeline (MVP) and Equitrans Expansion Project in the Federal Register on July 30, 2020. The Notice of Intent (NOI) informed the public of the MVP project proposed action: to construct and operate a buried 42-inch natural gas pipeline across approximately 3.5 miles of the Jefferson National Forest (JNF). The NOI identified the FS as the lead agency and the Bureau of Land Management (BLM) as the Federal cooperating agency. A corrected NOI has been prepared to update the responsible official for the FS, to update the applicability of the FS predecisional administrative review process, and to update contacts for both parties.

**DATES:** The Draft SEIS was available on September 25, 2020 and the Final SEIS is anticipated in December, 2020.

**FOR FURTHER INFORMATION CONTACT:** For further information on this project, please contact Ken Arney, the Regional Forester for the Southern Region, by leaving a voicemail at: 1-888-603-0261. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-

877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. For inquiries for the BLM, contact Victoria Craft, U.S. Bureau of Land Management Realty Specialist, at: (888) 603-0261.

## **SUPPLEMENTARY INFORMATION:**

### **Background and History**

The MVP is a proposed 303.5 mile interstate natural gas pipeline that crosses about 3.5 miles of the JNF, in Monroe County, West Virginia and Giles and Montgomery County, Virginia. The FS and the BLM participated as cooperating agencies with the FERC in the preparation of the MVP EIS. On June 29, 2017, the Notice of Availability for the FERC FEIS and the FS Draft Record of Decision (ROD) for the Mountain Valley Project Land and Resource Management Plan Amendment was published in the Federal Register.

On December 1, 2017, the FS adopted the FEIS and a ROD was signed by the JNF Forest Supervisor. The ROD amended the JNF Land and Resource Management Plan (Forest Plan) to allow the project to be consistent with the Forest Plan. The ROD included resource protection terms and conditions for the BLM to include should their decision be to grant a right-of-way (ROW). Therefore, both BLM and the FS have overlapping jurisdiction concerning the issuance of the terms and conditions, or stipulations included within the ROW grant.

Under the Mineral Leasing Act (30 U.S.C. 185 *et seq.*) (MLA), the BLM is the Federal agency responsible for issuing ROW grants for natural gas pipeline across Federal lands under the jurisdiction of two or more Federal agencies. The BLM is, therefore, responsible for considering the issuance of a ROW grant for the MVP for pipeline construction and operation across the lands under the jurisdiction of the FS and the United States Army Corps of Engineers (USACE). In 2017, the BLM received written concurrence to proceed from both Federal agencies and on December 20, 2017

issued a ROD approving the MLA ROW grant to construct and operate the MVP pipeline across Federal lands. The BLM ROD included a temporary use authorization.

Project implementation began in December 2017 and continued until July 27, 2018 when the Fourth Circuit Court of Appeals vacated and remanded the FS's decision approving the JNF plan amendment and BLM's MLA ROW decision. However, the Court vacated the BLM's MLA ROW decision only as it related to the portion through FS lands; the ROW across USACE lands was not affected and that decision remains in place. The Fourth Circuit concluded that aspects of the FS decision failed to comply with the National Environmental Policy Act (NEPA) and the National Forest Management Act (NFMA). The Court upheld the BLM's adoption of and reliance on FERC's FEIS as satisfying the requirements of NEPA in support of the MLA ROW decision across Federal lands. The Court, however, vacated BLM's decision approving the MLA ROW across the JNF, concluding that the BLM did not analyze and determine whether the proposed route utilized rights-of-way in common to the extent practical, as required by the MLA, 30 U.S.C. 185(p).

On May 1, 2020, Mountain Valley Pipeline, LLC (Mountain Valley) submitted a revised MLA ROW application to the BLM seeking to construct and operate the natural gas pipeline across the JNF. Mountain Valley also requested that the FS amend the JNF Forest Plan consistent with the issues identified by the Fourth Circuit Court. On May 28, 2020, the BLM deemed Mountain Valley's revised application complete. For more detailed information on the background and history of the MVP project, see the project website at:

*<https://www.fs.usda.gov/detail/gwj/landmanagement/projects/?cid=stelprd3827827>.*

### **Purpose and Need for Action**

The FS's purpose and need for the proposed action is to respond to a proposal from Mountain Valley to construct and operate a buried 42-inch interstate natural gas

pipeline that would cross National Forest Systems (NFS) lands on the JNF along a proposed 3.5-mile corridor. A FS decision is needed because the project would not be consistent with several JNF Forest Plan standards including utility corridors, soil, riparian, old growth, the Appalachian National Scenic Trail (ANST), and scenic integrity without a project-specific amendment. Relatedly, there is a need to determine what terms and conditions, or stipulations should be provided to the BLM in order to protect resources and the public interest consistent with the MLA, 30 U.S.C. 185(h).

For the FS, a supplemental analysis and new decision is needed because the Fourth Circuit Court of Appeals vacated the FS ROD. The Court identified both NFMA and NEPA issues. To resolve the Court's NFMA issues, there is a need, at a minimum, to apply FS Planning Rule requirements to soil and riparian resources and evaluate both the purpose and the effects of the amendment to threatened and endangered aquatic species, consistent with 36 CFR 219.13(b)(5). To ensure all resources potentially affected by the amendment receive equal consideration, there is a need to apply the Planning Rule requirements to resources including water; terrestrial and botanical threatened and endangered species; old growth; the ANST; scenic integrity; and to evaluate the purpose and effect of the amendment.

The Court also identified NEPA deficiencies. There is a need for the FS, at a minimum, to demonstrate that an independent review of the sedimentation analysis has occurred, that predicted effects are supported with rationale, and that previous concerns and comments related to erosion and its effects have been satisfied. To meet this objective, there is a need to evaluate and assess erosion, sedimentation, and water quality effects in relation to anticipated mitigation effectiveness. To address Court issues related to meeting MLA requirements (30 U.S.C. 185(p)), there is a need to analyze and determine whether the proposed route utilizes rights-of-way in common to the extent practicable. Relatedly, the FS needs to re-evaluate the feasibility and practicality

of having routes that are not on NFS lands.

There is new information and changed circumstances to consider since the FS ROD was signed in December 2017. New information includes recent federally listed threatened and endangered species and critical habitat designations. Changed circumstances include the status of the project and road use. Over fifty percent of the MVP project has been implemented and stabilization efforts are ongoing; and, the proposal no longer includes the use of the Pocahontas, Mystery Ridge, or Brush Mountain road. Given the new information and changed circumstances, the FS needs to evaluate the sufficiency of the terms and conditions, or stipulations that would be submitted to the BLM.

The BLM's purpose and need for action is to respond to Mountain Valley's revised MLA ROW application for the MVP project to construct and operate a natural gas pipeline across NFS lands consistent with the MLA, 30 U.S.C. 185, and BLM's implementing regulations, 43 CFR part 2880. Under the MLA, the BLM has responsibility for reviewing Mountain Valley's ROW application and authority to issue a decision on whether to approve, approve with modifications, or deny the application.

The BLM's review of the ROW application will focus, in part, on the FS supplemental analysis for NFS lands to make their decision, but also intends to rely on the FERC FEIS, consistent with the Fourth Circuit's decision. The BLM will work as a cooperating agency with the FS to complete the necessary environmental analysis to address the issues identified by the Fourth Circuit.

### **Proposed Action**

In response to the purpose and need, the FS would provide construction and operation terms and conditions, or stipulations (terms) as needed for the actions listed below. The terms and conditions, or stipulations would be submitted to the BLM for inclusion in the ROW grant. The FS would also provide concurrence to the BLM to

proceed with the ROW grant. The operation and maintenance actions that need terms and conditions, or stipulations and FS concurrence include:

- Construction of a 42-inch pipeline across 3.5 miles of the JNF.
- The use of a 125-foot-wide temporary construction ROW for pipeline installation and trench spoil. The width would be reduced to approximately 75 feet to cross most wetlands. Once construction is complete, the MVP would retain a 50-foot permanent ROW to operate the pipeline.
- The use of above-ground facilities, limited to pipeline markers (e.g., at road and trail crossings) to advise the public of pipeline presence, and cathodic pipeline protection test stations that are required by Department of Transportation.

An integral part of the proposed action is the Plan of Development (POD) that guides pipeline construction, operation, and maintenance. The POD includes resource mitigation for reducing or eliminating impacts to resources. See the FERC FEIS, Sec. 1.5 for a complete list of requirements for the MVP that is managed by the FERC.

### **Forest Plan Amendments**

Eleven Forest Plan standards on the JNF are proposed to be amended to make the project compliant with the Forest Plan, i.e., allow the BLM to grant a ROW. Standards include: FW-248 (utility corridors); FW-5 (revegetation); FW-8 (soil compaction in water saturated areas); FW-9 (soil impacts from heavy equipment use); FW-13 and FW14 (exposed soil and residual basal area within the channeled ephemeral zone); 11-003 (exposed soil within the riparian corridor); 6C-007 and 6C-026 (tree clearing and utility corridors in the old growth management area); 4A-028 (Appalachian National Scenic Trail and utility corridors); and FW-184 (scenic integrity objectives).

The FS's Planning Rule at 36 CFR 219.13(b)(2) requires responsible officials to provide notice of which substantive requirements of 36 CFR 219.8 through 219.11 are likely to be directly related to the amendment. Whether a Planning Rule provision is

directly related to an amendment is determined by any one of the following: The purpose for the amendment, a beneficial effect of the amendment, a substantial adverse effect of the amendment, or a lessening of plan protections by the amendment (36 CFR 219.13(b)(5)). Based on those criteria, the substantive Planning Rule provisions that are likely to be directly related to the amendments are: § 219.8(a)(1) (terrestrial ecosystems); § 219.8(a)(2)(ii) (soils and water productivity); § 219.8(a)(2)(iv) (water resources); § 219.8(a)(3)(i) (ecological integrity of riparian areas); § 219.9(b) (contributions to recovery of threatened and endangered species); § 219.10(a)(3) (utility corridors); § 219.10(b)(1)(vi) (other designated areas); § 219.10(b)(1)(i) (scenic character); and § 219.11(c) (timber harvesting for purposes other than timber production).

### **Responsible Officials**

For the Forest Service, the responsible official is the Under Secretary, U.S. Department of Agriculture, Natural Resources and the Environment. For the BLM, the responsible official is the Eastern States Director.

### **Nature of Decision To Be Made**

#### **Forest Service**

Given the purpose and need, the FS responsible official will review the proposed action including the POD, alternatives, the terms and conditions, stipulations, the environmental consequences that would be applicable to NFS lands, public comment, and the project record in order to make the following decisions:

- Whether to approve a Forest Plan amendment that would modify eleven standards in the JNF's Forest Plan;
- Determine what terms and conditions, or stipulations should apply to a BLM ROW grant;
- Whether to issue a written letter of concurrence to BLM if the decision is to assent to the project on NFS lands; and,

- Whether to adopt all or portions of the FERC FEIS that is relevant to NFS lands.

While the Equitrans Expansion project was included in the FERC FEIS, it is not on NFS lands. Therefore, no analysis will be prepared or decision made on that project.

### **Bureau of Land Management**

Consistent with the MLA, 30 U.S.C. 185, and BLM's implementing regulations, 43 CFR part 2880, the BLM will review Mountain Valley's revised MLA ROW application, the FERC FEIS, and the FS supplemental analysis to determine whether to approve, approve with modifications, or deny the MLA ROW application through the NFS lands. As a cooperating agency, the BLM intends to rely on and adopt the FS supplemental analysis for its decision, as long as the analysis provides sufficient evidence to support the decision and the FS addresses the BLM's comments and suggestions to the BLM's satisfaction. Before issuing a decision on Mountain Valley's application, the BLM would need the FS's written concurrence. Through the concurrence process, if the BLM's decision is to approve the ROW, the FS would submit to the BLM any stipulations for inclusion in the ROW grant that are deemed necessary to protect the environment and otherwise protect the public interest consistent with 30 U.S.C. 185(h); 43 CFR 2885.11. The BLM decision would be documented in a separate ROD.

### **Public Engagement Process**

Scoping was completed and summarized in the FERC FEIS (FEIS, Section ES-2, 1.4). Written, specific comments, including those that were relevant to NFS lands, identified concerns and issues that were addressed in the FEIS. Scoping will not be repeated and this SEIS will focus on the topics identified by the Fourth Circuit Court and others that are closely related to the Court's findings including:

#### *JNF Forest Plan Amendment*

- The purpose and effects of the Forest Plan amendment on resources including those within the utility corridor; soil; water; riparian; terrestrial; botanical, and

aquatic threatened and endangered species; old growth; the ANST, scenic integrity; and,

- How the proposed amendment meets Planning Rule requirements.

*Independent Review of Sedimentation Analysis*

- An evaluation and assessment of erosion and sedimentation and its associated effects to water quality and threatened and endangered aquatic species;
- An evaluation of predicted effects in relation to anticipated mitigation effectiveness, supported with rationale; and,
- Disclosure on how previous concerns and comments related to erosion and its effects that were provided to the FERC have been satisfied.

**New Information and Changed Circumstances**

There is new information and changed circumstances to consider since the FS ROD was signed in December 2017. New information includes recent federally listed threatened and endangered species and critical habitat designations. Changed circumstances include the status of the project and road use (see Purpose and Need for Action).

Additional opportunities for public comment will be provided when the Draft SEIS is available. A FS decision to amend the Forest Plan will not be subject to either the 36 CFR 218 or 36 CFR 219 pre-decisional administrative review because the responsible official is the Under Secretary of Agriculture, Natural Resources and Environment (36 CFR 218.13(b); 36 CFR 219.13(b)).

**James E. Hubbard,**

*Under Secretary, Natural Resources and Environment,*

*U. S. Department of Agriculture.*